

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MISS JONES LLC,

Plaintiff,

-against-

ORDER

18-CV-1398 (NGG) (SJB)

MAGDA VIERA, JACK VIERA,
BARCLAYS BANK DELAWARE,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

On March 6, 2018, Plaintiff Miss Jones, LLC filed this foreclosure action pursuant to the New York Real Property Actions and Proceedings Law ("RPAPL") against Defendants Magda Viera, Jack Viera (collectively, "the Vieras"), Barclays Bank Delaware ("Barclays"), the City of New York Environmental Control Board, and the Transit Adjudication Bureau (collectively, "Defendants"). (Compl. (Dkt. 1) ¶¶ 2-10.) The property that the Vieras own, and that is the subject of the litigation, is 109-04 Northern Boulevard, Corona, New York 11368 (the "Subject Property").

On March 23, 2018, Magda Viera was served personally with the summons and Complaint and Jack Viera was served through Magda Viera. (Summons Returned Executed ("Magda Viera Summons") (Dkt. 11) at 1; Summons Returned Executed ("Jack Viera Summons") (Dkt. 10) at 1.) Copies of the summons and Complaint were thereafter mailed to both Jack and Magda Viera at the Subject Property, which was described as their place of business. (Magda Viera Summons at 2; Jack Viera Summons at 1.) Proof of this service was filed on the docket 32 days after physical service of the summons and Complaint to the Vieras,

and 27 days after mailing. Barclays was served with the summons and Complaint on March 16, 2018 at its business address in Delaware. (Summons Returned Executed (Dkt. 8) at 1.)

No defendant ever appeared in the case and each failed to answer. As a result, the Clerk of Court entered default against each of them on May 3, 2018. (Entry of Default (Dkt. 16).)

On May 25, 2018, Plaintiff moved for default judgment against all Defendants. (Mot. for Default J. (“Mot.”) (Dkt. 17.) The Affidavit of Service attached to the motion for default judgment indicated that all Defendants had been served with a copy of the motion and supporting papers via First Class Mail. (Affidavit of Service (Dkt. 17-7) at 1.) The motion was mailed to the Vieras at the Subject Property and was mailed to Barclays at its business address in Delaware. (Id.)

This court referred Plaintiff’s motion to Magistrate Judge Sanket J. Bulsara for a report and recommendation (“R&R”). (May 29, 2018 Order Referring Mot.) On December 7, 2018, Judge Bulsara ordered Plaintiff to provide proof that service was adequate as to the City of New York Environmental Control Board and the Transit Adjudication Bureau. (Dec. 7, 2018 Order (Dkt. No. 19) at 2-3.) Miss Jones then voluntarily dismissed those two defendants. (Notice (Dkt. No. 20).)

On February 5, 2019, Judge Bulsara issued an R&R recommending that the court deny without prejudice Plaintiff’s motion for default judgment. (R&R (Dkt. 22) at 1.) Judge Bulsara further recommended that the Clerk’s entry of default against Jack Viera be vacated. (Id. at 12.)

No party has objected to the R&R and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). The court therefore reviews the R&R for clear error. See Wider v. Colvin, 245 F. Supp. 3d 381, 385 (E.D.N.Y. 2017) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is

apparent from the face of the record.”); see also Porter v. Potter, 219 F. App’x 112 (2d Cir. 2007) (summary order) (“[F]ailure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.” (internal citation omitted)).

Finding no clear error in the R&R, the court ADOPTS IN FULL the R&R and DENIES Plaintiff’s motion for default judgment. The Clerk of Court is respectfully requested to vacate the entry of default against Jack Viera.

SO ORDERED.

Dated: Brooklyn, New York
February 25, 2019

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge